

TTAB

November 21, 2006

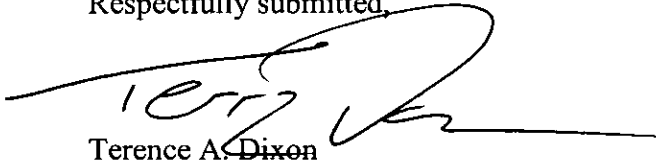
United States Patent and Trademark Office  
Attn: Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Re: Opposition No. 91167945  
Laurice El Badry Rahme Ltd. v. Asprey Holdings Limited

To the Commissioner for Trademarks:

Enclosed for filing in this proceeding are an original and one copy of Applicant's Brief in Opposition to Opposer's Motion for Suspension of Proceedings or for an Extension of Time.

Respectfully submitted,



Terence A. Dixon

Enclosure

cc: Barbara H. Loewenthal, Esq. (w/encl)

11-21-2006

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

LAURICE EL BADRY RAHME LTD.  
dba LAURICE & CO.

Opposer,

v.

ASPREY HOLDINGS LIMITED CORP.

Applicant.

Opposition No. 91167945

**APPLICANT'S BRIEF IN OPPOSITION TO OPPOSER'S MOTION  
FOR SUSPENSION OF PROCEEDINGS OR FOR AN EXTENSION OF TIME**

Applicant, Asprey Holdings Limited Corp., respectfully submits that there is no basis for suspending these proceedings or for extending the trial dates. Opposer Laurice El Badry Rahme Ltd.'s motion should be denied for the following reasons:

- There Is No Cause For Suspending This Proceeding

Contrary to what Opposer suggests, the parties are not engaged in settlement discussions. In fact, until Opposer's recent request for an extension of the trial dates, there had been no communication between the parties for nearly five months. Nor does it seem likely the parties will be engaged in settlement negotiations in the near future. Indeed, granting Opposer's request will simply delay the resolution of this case.

- There Is No Justification For Extending The Trial Dates

The Board gave the parties seven months to conduct discovery, but Opposer failed to do anything within that time frame. The Board's initial scheduling order set the discovery period to open on January 3, 2006 and to close on July 2, 2006. Although the Board suspended the proceedings on April 24th, the Board lifted this suspension on July 13th and issued a revised scheduling order which extended the discovery period until November 3rd. Opposer claims that it needs more time to prepare discovery, because it never received the revised scheduling order. Obviously, this is no excuse for failing to take discovery in the three and a half months after the discovery period opened. Nor does it excuse Opposer's failure to take discovery within the three and a half months after the Board lifted the suspension. Opposer could have checked on the status of this proceeding at any time by running a search on TTABVue. Thus, Opposer's failure to serve discovery was caused by its own lack of diligence.

## **BACKGROUND**

The issues presented in this opposition proceeding are straightforward. Applicant has sought to register 167 NEW BOND STREET LONDON and Design for a broad range of goods and services in Classes 3, 8, 9, 14, 18, 25, 28, and 35. Opposer initially opposed this application based on its registration for the mark BOND NO. 9 for fragrances in Class 3 and for clothing in Class 25. Applicant answered the Notice of Opposition and filed a counterclaim to cancel Opposer's registration on the grounds of fraud on the Trademark Office since Opposer had never used its mark on clothing.

The Board's scheduling order for this proceeding initially set the discovery period to open on January 3, 2006 and to close on July 2, 2006. On April 14th, Applicant moved for summary judgment on its counterclaim. The Board issued an order suspending the proceedings on April 24th.

Opposer did not contest Applicant's summary judgment motion. Instead, Opposer voluntarily surrendered its registration, and argued that this rendered Applicant's motion moot. On July 13th, the Board granted Applicant's petition for cancellation, lifted the suspension, and ordered the proceedings to resume. Under the Board's revised scheduling order the discovery period was extended until November 3rd.

Opposer did not serve any discovery requests or deposition notices in the three and a half months between the opening day of the discovery period (January 3rd) and the date that the Board suspended the proceedings (April 24th). Nor did Opposer serve any discovery requests or deposition notices in the three and a half months between the date that the Board lifted the suspension (July 13th) and the end of the discovery period (November 3<sup>rd</sup>).

Opposer claims that it needs more time to prepare and serve discovery, because it never received the Board's revised scheduling order. Opposer claims that it did not become aware of this order until October 30, 2006 when Opposer conducted "a routine 'follow-up' to ascertain the status of the matter." (Opp. Br. at 1.) In other words, Opposer did not check on the status of this proceeding until nearly four months after it surrendered its registration and asserted that Applicant's motion for summary judgment was moot. Opposer has not explained why it failed to take discovery in the three and a half months after the discovery period opened. Opposer has not explained why it failed to check on the status of the proceeding until nearly four months after it surrendered its registration. Nor has Opposer explained why it failed to prepare and serve discovery requests once it became aware of the impending deadline.

Finally, Opposer argues that the Board should suspend the proceedings "so that the parties can pursue settlement discussions." (Opp. Br. at 1.) However, there are currently no settlement negotiations and there does not seem to be any prospect for settlement at the present time. Indeed, there have never been any bilateral settlement discussions. On June 2nd, Opposer sent Applicant an unsolicited offer of settlement, but did not bother to follow-up on this proposal until November 1st. (*See Exhibits A and B attached.*) Applicant has categorically rejected Opposer's proposal and has made it clear that it has no interest in negotiating an agreement that would unduly limit Applicant's ability to use or register its mark. (*See Exhibit C attached.*) Since then, Opposer has not made any other proposals.

In short, it takes two to tango. Opposer's unsolicited proposal and its failure to follow up hardly constitutes a serious bilateral "discussion." It is also clear that the parties are not currently engaged in settlement discussions and no further settlement negotiations are anticipated (at least not on anything like the terms proposed by Opposer) .

## ARGUMENT

### I. There Is No Cause For Suspending This Proceeding

The Board may grant a reasonable suspension of the trial dates if the parties “are engaged in serious bilateral settlement discussions.” However, a party that does not ask for a suspension of the trial dates until the end of the discovery period “does so at its own risk, and should not expect that such relief will be granted retroactively,” especially where – as here – the request is opposed by the opposing party. *Old Nutfield Brewing Co. v. Hudson Valley Brewing Co.*, 65 USPQ2d 1701, 1703 (TTAB 2002).

In this case, there is no basis for a suspension, because the parties are clearly not engaged in serious bilateral settlement discussions. As discussed above, Opposer sent Applicant an unsolicited offer of settlement on June 2nd. (See Exhibit A attached.) Opposer did not bother to follow-up on this proposal until November 1st, when Opposer asked for Applicant’s consent to extend the trial dates. (See Exhibit B attached.) Applicant categorically rejected Applicant’s offer shortly thereafter. (See Exhibit C attached.) Aside from these three letters, there have been no communications between the parties regarding settlement.

Moreover, there does not seem to be any immediate prospect for serious bilateral settlement discussions in this proceeding. As discussed above, Opposer did not follow-up on its own settlement proposal until the last week of the discovery period. Applicant has made it clear to Opposer that it does not believe that there is any realistic potential for confusion between the parties’ marks. In addition, Applicant has made it clear that it will not enter into any agreement that would unduly limit its ability to use or register the mark 167 NEW BOND STREET LONDON. Since then, Opposer has not responded to Applicant’s concerns and has not made any other settlement proposals. In view of the foregoing, there is no point in suspending the proceedings.

## **II. There Is No Justification For Extending The Discovery and Testimony Periods**

The Board has given the parties at least seven months for discovery. Now at the eleventh hour – indeed on the very last day of the discovery period – Opposer has asked the Board for another three months just “to prepare” (let alone take) discovery. (Opp. Br. at 1.) Opposer’s request is unreasonable on its face and should be denied.

In order to extend the trial dates, Opposer must demonstrate that there is “good cause” for the extension. In this regard, Opposer “must set forth with particularity” the facts that supposedly justify the Opposer’s request. Mere conclusory allegations are not enough. In addition, Opposer must demonstrate that the need for the extension was not caused by its own lack of diligence or unreasonable delay in taking discovery within the time allotted. TBMP § 509.01(a). Opposer has not and cannot satisfy its burden of proof on these issues.

Opposer did not serve any interrogatories, document requests, or requests for admission during the first three and a half months of the discovery period. Nor did Opposer notice or schedule any discovery depositions during this three and a half month period. Opposer’s motion does not provide any explanation for its lack of diligence during the first half of the discovery period.

Likewise, Opposer did not serve any discovery requests or deposition notices in the three and a half months after the Board lifted the suspension and the proceedings resumed. Opposer claims that it never received the Board’s revised scheduling order, and thus, did not realize that the proceedings had resumed until it conducted a “routine” follow-up check on October 30th. (Opp. Br. at 1.) As discussed above, the Board suspended this proceeding when Applicant filed a motion for summary judgment. Opposer responded to that motion by surrendering its registration certificate and arguing that Applicant’s motion was moot. Because Applicant’s motion was uncontested, Opposer should have known that it would only be a short time before the Board cancelled the registration and lifted the suspension. And in fact, the Board issued a revised scheduling order only 28 days after Applicant filed its reply brief.

Opposer could have checked on the status of this proceeding at any time by running a search on TTABVUE, by calling the interlocutory attorney, or by hiring a search firm to perform a manual inspection of the TTAB's files. Indeed, Opposer admits that it became aware of the Board's revised scheduling order while conducting a "routine 'follow-up'" presumably using one or more of these methods. (Opp. Br. at 1.) Thus, there is no good cause for granting an extension, because Opposer's failure to act was within Opposer's control and entirely the result of its own lack of diligence in failing to monitor the status of this proceeding. *See Old Nutfield Brewing Co.*, 65 USPQ2d at 1704 (noting that parties can easily check on the official status of Board proceedings at any time).

Moreover, Opposer does not explain why it failed to serve any discovery requests once it became aware of the Board's revised scheduling order. Opposer claims that it discovered the Board's order on October 30th. At that point there were five business days left in the discovery period. It is well established that interrogatories, document requests, and requests for admission may be served at any point in the discovery period, even if the responses to those requests are not due until after the discovery period has closed. *See* TBMP §§ 405.01, 406.01, 407.01. Thus, Opposer had plenty of time to prepare and serve discovery requests and has not explained why it failed to do so within the time allowed.

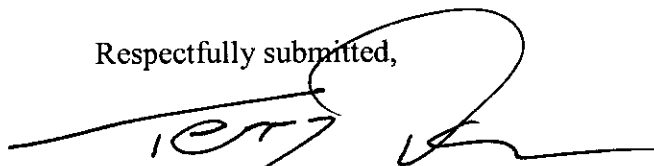
Finally, Opposer may argue that it did not serve discovery requests or deposition notices, because the parties were engaged in settlement discussions. As discussed above, Opposer did not propose any terms for settlement until June 2nd. Obviously, this does not excuse Opposer's failure to take discovery in the first three and a half months of the discovery period prior to the Board's suspension order. Moreover, Opposer did not even bother to follow-up on its proposal for five months. Therefore, this is not a situation where the parties failed to take discovery because they were engaged in serious settlement discussions. In any event, the Board has made it clear that the fact that one party may be interested in pursuing settlement is no excuse for failing to take discovery within the time allowed. *See, e.g., Fairline Boats plc v. New Howmar Boats Corp.*, 59 USPQ2d 1479 (TTAB 2000) (mere existence of settlement proposals, without

more, does not justify a delay in taking testimony); *Instruments SA Inc. v. ASI Instruments Inc.*, 53 USPQ 1925 (TTAB 1999) (no good cause for an extension where plaintiff's claim of ongoing settlement discussion was unequivocally denied by the opposing party and otherwise not supported by the record).

### CONCLUSION

This brief is being filed on November 21, 2006, which is more than eleven months after Opposer was entitled to begin taking discovery in this proceeding. Opposer had ample opportunity to serve interrogatories, document requests, requests for admission, and/or deposition notices, but failed to do so within the time allotted. Opposer has not demonstrated that there is good cause for extending the discovery deadline, because the delay was caused by Opposer's lack of diligence in pursuing discovery and Opposer's failure to monitor the deadlines in this proceeding. Moreover, there is no point in suspending these proceedings, because the parties are not engaged in serious bilateral settlement discussions. For all of these reasons, Applicant respectfully requests that the Board deny Opposer's motion to suspend and deny Opposer's motion to extend.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gundersen', is written over a horizontal line.

Glenn A. Gundersen  
Terence A. Dixon  
Erik Bertin  
DECHERT LLP  
Cira Center  
2929 Arch Street  
Philadelphia, PA 19104-2808  
(215) 994-2183

Dated: November 21, 2006

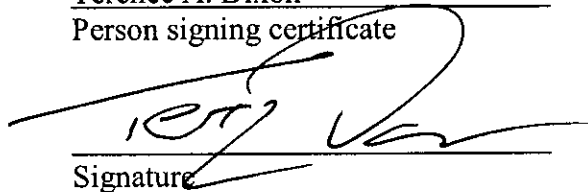
Attorneys for Applicant  
ASPREY HOLDINGS LIMITED CORP.

Certificate of Mailing by Express Mail

I hereby certify that Applicant's Brief in Opposition to Opposer's Motion to Suspend and Opposer's Motion for an Extension of Time is being deposited with the United States Postal Service as Express Mail, post office to addressee, in an envelope addressed to: United States Patent and Trademark Office, Attention: Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451 on November 21, 2006.

Terence A. Dixon

Person signing certificate



Signature

November 21, 2006

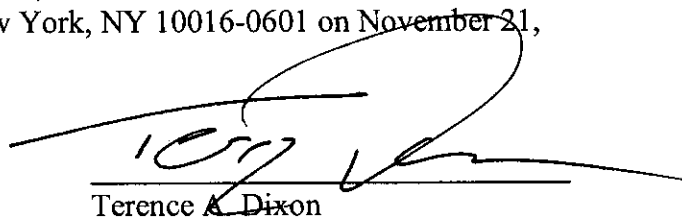
Date

EV 855692665 US

Express Mail Number

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Applicant's Brief in Opposition to Opposer's Motion to Suspend and Opposer's Motion for an Extension of Time has been duly served by mailing such copy first class, postage prepaid, to Barbara H. Loewenthal, Gottlieb, Rackman & Reisman PC, 270 Madison Avenue, New York, NY 10016-0601 on November 21, 2006.



Terence A. Dixon

**EXHIBIT "A"**

To Applicant's Brief in Opposition to Opposer's Motion  
for Suspension of Proceedings or for an Extension of Time

**GOTTLIEB, RACKMAN & REISMAN, P.C.**

**COUNSELORS AT LAW**

PATENTS • TRADEMARKS • COPYRIGHTS • INTELLECTUAL PROPERTY

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STEVEN STERN  
YUVAL H. MARCUS

PATENT AGENT  
ZOYA V. CHERNINA

**RECEIVED**

**JUN 14 2006**

**G.A.G.**

June 2, 2006

**FOR SETTLEMENT PURPOSES, ONLY SUBJECT TO RULE 408**

Glenn A. Gundersen, Esq.  
Dechert LLP  
Cira Center  
2929 Arch Street  
Philadelphia, PA 19104-2808

RE: Laurice El Rahme Ltd. dba Laurice & Co.  
v. Asprey Holdings Limited Corp.  
and Opposition No. ~~91167945~~ with respect to  
Trademark: 167 NEW BOND STREET -LONDON (stylized)  
In the United States - Our Ref. No. 4543/73

Dear Glenn:

Further to our telephone conversation of May 15, 2006, we have now had the opportunity to meet with our client to discuss this matter in some detail.

To avoid a protracted proceeding, our client, Laurice El Rahme Ltd. dba Laurice & Co. ("Laurice") has indicated that it would withdraw the Notice of Opposition filed against your client, Asprey Holdings Limited Corp. ("Asprey"), provided Asprey would agree to the following restrictions with respect to its use of the mark 167 NEW BOND STREET - LONDON (stylized) in the United States:

- the trademark 167 NEW BOND STREET and design (as shown on perfume and in drawing in application, attached herewith as Exhibit "A") will always be used inside of packaging for the goods, e.g., in the packaging of the boxes for perfumes; toilet waters; and the other items listed in Class 3 ("the Goods");
- the trademark 167 NEW BOND STREET and design will never be used, displayed or featured in advertising or point of purchase displays or any other displays associated with the Goods;
- the boxes and packaging for the Goods will always display the company name "ASPREY" and the packaging will be in substantially similar form as the form currently used for the Goods, and as depicted in Exhibit "B" attached herewith; and

Glenn A. Gundersen, Esq.  
Dechert LLP  
June 2, 2006  
Page 2

- Asprey will always use the mark 167 NEW BOND STREET and design in connection with the Goods with a purple circular center (as shown in Exhibit "C" attached herewith).

We will place no restrictions on goods in the other classes in your client's application.

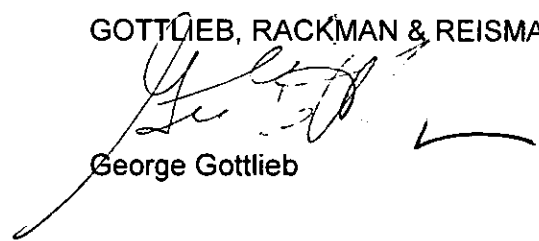
In other words, for settlement purposes, the current use of your client's mark, essentially within packaging, is only minimally objectionable to our client. Our review of your client's current usage of its mark on the Goods is in conformity with the above restrictions.

Laurice is also filing a voluntary Cancellation of Registration No. 2,742,675 for the mark BOND NO. 9, and we are informing the Trademark Trial and Appeal Board of the same. This will moot the Summary Judgment Motion for cancellation.

Please advise whether a settlement is achievable along these lines. Otherwise, we are prepared to proceed with the opposition.

Very truly yours,

GOTTLIEB, RACKMAN & REISMAN, P.C.

A handwritten signature in dark ink, appearing to read "George Gottlieb", is written over the typed name. The signature is fluid and cursive.

George Gottlieb

BHL:mr

Enclosures

S:\barbara\clients\Laurice & Colasprey.ltr.wpd

## EXHIBIT "A"



## United States Patent and Trademark Office

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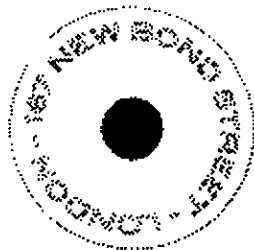
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## Record 1 out of 1

[TARR Status](#)[ASSIGN Status](#)[TDR](#)[TTAB Status](#)

( Use the "Back" button of the Internet Browser to return to TESS)

**Word Mark** 167 NEW BOND STREET - LONDON -**Goods and Services**

IC 003. US 001 004 006 050 051 052. G & S: Perfumes; toilet waters; preparations for the bath, namely, bath gels and bath oils; lip balm; body cream; body powder; beauty masks; cold cream, hand cream, night cream, eye cream; skin conditioners; skin lotions, body lotions; skin moisturizers; baby powder; baby oil; nail-care preparations; sun screen preparations, and after-sun lotions; cosmetics, namely, foundation, concealers, blush, rouge, eyebrow pencils, eyeliner, lipstick, lip gloss, lip liner, mascara, nail polish, nail-polish remover, cosmetic face powder; compacts containing makeup, and makeup remover; soaps; essential oils for personal use; hair lotions; hair-care preparations; non-medicated cleaning preparations for personal hygiene purposes, namely, skin cleansers, facial cleansers, body scrubs, facial scrubs, and facial masks; antiperspirants; dentifrices; shaving preparations; after-shave lotions; potpourri

IC 008. US 023 028 044. G & S: Kitchen cutlery, namely, table knives, forks and spoons; knives, namely, paring knives, butcher knives, chef's knives, cleavers, bread knives, hunting knives, fishing knives, pocketknives, penknives, and machetes; boxes specially designed for storage of kitchen cutlery; cheese slicers; manicure and pedicure sets sold complete; nail files; nail clippers; fingernail buffers; hand tools, namely, crimping irons, curling tongs, cuticle nippers, cuticle tweezers, and sugar tongs; razors; electric and non-electric razors; egg slicers; non-electric vegetable and fruit peelers, and strainers; scissors

IC 009. US 021 023 026 036 038. G & S: Eyeglasses; sunglasses; sunglass and eyeglass frames; sunglass and eyeglass cases, cords and chains; binoculars; magnifying glasses

IC 014. US 002 027 028 050. G & S: Semi-precious gemstones; precious gemstones; watches, clocks and chronographs for use as watches, and parts and fittings for all the aforesaid; jewelry and imitation jewelry; statutes of precious metal; cufflinks; tie pins and dress studs

IC 018. US 001 002 003 022 041. G & S: Articles of leather or of imitation leather, namely, luggage; luggage trunks; travelling bags; briefcases; attache cases; garment bags for carrying suits; hand bags; purses; pocket wallets; vanity cases sold empty; business and calling card cases sold empty; leather key fobs; leather pouches; umbrellas; parasols; shooting sticks, namely, combined walking stick and seat; walking sticks; whips, harnesses and saddlery; tie cases; satchels; dog collars; dog leashes

IC 025. US 022 039. G & S: Clothing for men, women and children, namely, socks, stockings, lingerie, nightgowns, brassieres, panties, knickers, overalls, tops, vests, undershirts, underpants, pajamas, bathrobes, swimwear, trousers,

shorts, skirts, slacks, blouses, shirts, T-shirts, sweaters, waistcoats, shawls, pullovers, cardigans, jerseys, leotards, jackets, blazers, suits, tuxedos, ties, cravats, overcoats, coats, hunting jackets, track suits, raincoats, gloves, suspenders, belts, stoles, boas, parkas, capes and ponchos; footwear; headgear, namely hats, scarves, kerchiefs, caps, and headbands

IC 028. US 022 023 038 050. G & S: Toys, games and playthings, namely, archery equipment, namely, open and non-telescopic bow sights, arrows and bow cases; badminton game playing equipment, backgammon game sets; cricket balls and bats; billiard game playing equipment; equipment sold as a unit for playing board games; equipment sold as a unit for playing card games; pool cue cases; dart-board cases; gaming equipment, namely, chips; golf clubs; golf bags; darts; waterfowl hunting decoys; electric action toys; volleyball game playing equipment; manually operated exercise equipment; fencing equipment, namely, foils, gauntlets and masks; fishing rods; hunting game calls; horseshoes for recreational purposes; jigsaw puzzles; kites; musical toys; coin or non-coin-operated pinball machines; porcelain dolls; tennis, racquetball and squash rackets; stuffed toy animals; teddy bears; golf tees; tennis, racquetball and squash balls; tennis, racquetball and squash covers; exercise treadmills; exercise trampolines; equipment for playing ticktacktoe; chess sets, mahjong sets; decorations for Christmas trees

IC 035. US 100 101 102. G & S: Retail department store services; computerized online retail store services and mail-order, telephone-order, and facsimile-order catalog services, all in the field of general merchandise

**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

**Design Search Code** 26.01.08 - Circles having letters or numerals as a border; Circles having punctuation as a border; Letters, numerals or punctuation forming or bordering the perimeter of a circle  
26.01.17 - Circles, two concentric; Concentric circles, two; Two concentric circles  
26.01.21 - Circles that are totally or partially shaded.

**Serial Number** 76570501

**Filing Date** January 13, 2004

**Current Filing Basis** 44E

**Original Filing Basis** 1B;44D

**Published for Opposition** July 12, 2005

**Owner** (APPLICANT) ASPREY HOLDINGS LIMITED CORPORATION UNITED KINGDOM 167 New Bond Street London W1S 4AR UNITED KINGDOM

**Attorney of Record** Glenn A. Gundersen

**Priority Date** October 10, 2003

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "London" APART FROM THE MARK AS SHOWN

**Type of Mark** TRADEMARK. SERVICE MARK

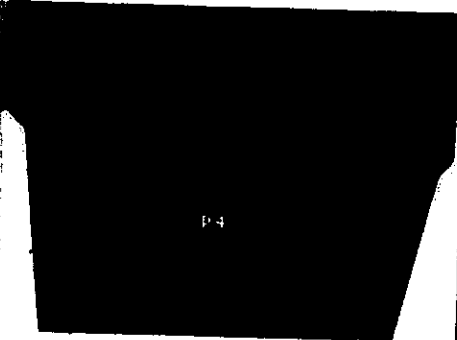
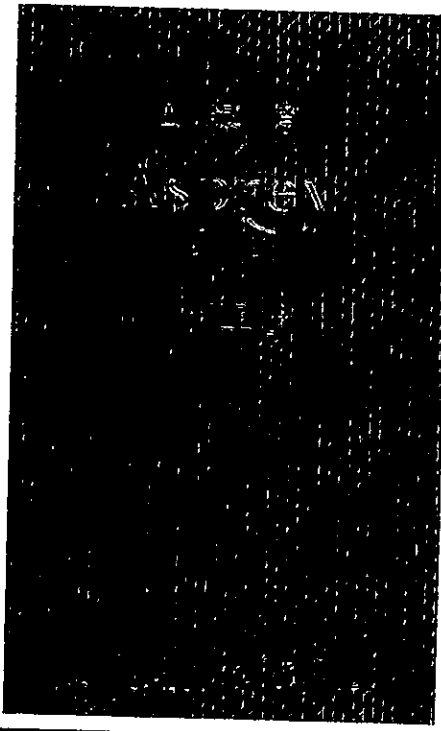
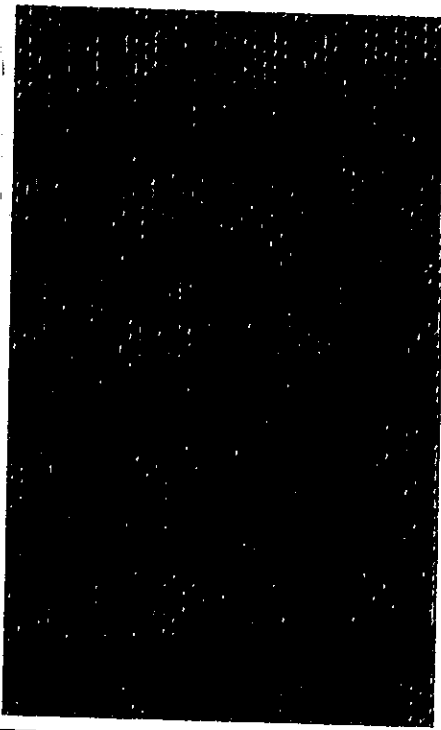
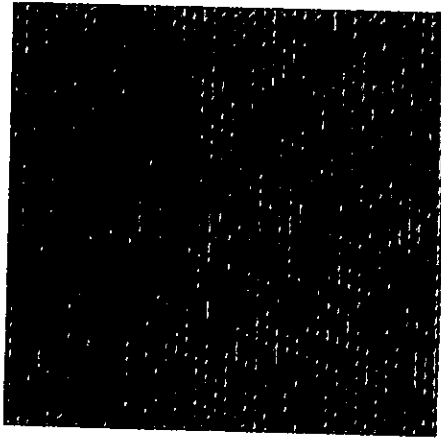
**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

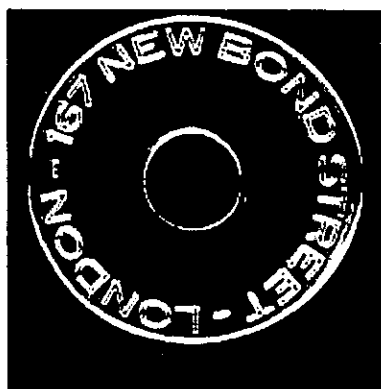
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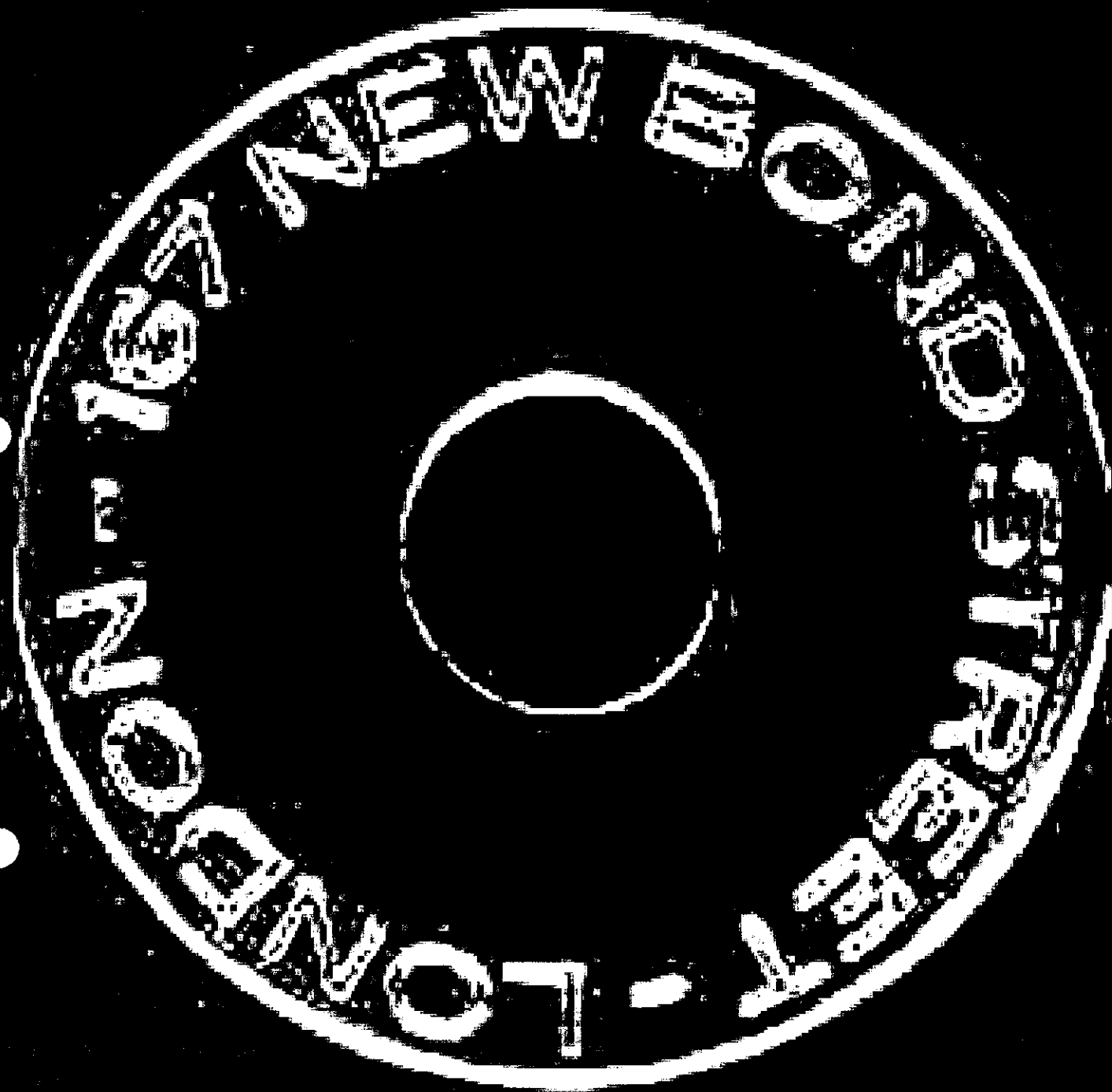
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## EXHIBIT "B"



## EXHIBIT "C"





**EXHIBIT "B"**

To Applicant's Brief in Opposition to Opposer's Motion  
for Suspension of Proceedings or for an Extension of Time

**GOTTLIEB, RACKMAN & REISMAN, P.C.**  
270 Madison Avenue, 8th Floor  
New York, New York 10016-0601  
Telephone: (212) 684-3900 - Fax: (212) 684-3999

**TAB**

NOV 01 2006

**FACSIMILE COVER SHEET**

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<b>COMPANY:</b>	Dechert, LLP
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November 1, 2006	
4543/73	

**MESSAGE:**

**Re: Laurice El Badry Rahme Ltd. dba Laurice & Co./Asprey Holdings Limited Corp. - Opposition No. 91167945**

Dear Terence:

We note the deadline for discovery is coming up in connection with the above-referenced matter. Please advise if you will consent to a further Extension of Time for discovery and testimony and let us have your comments with respect to our letter of June 2, 2006. (Copy enclosed for your convenience.)

Very truly yours,

  
Barbara H. Loewenthal

**EXHIBIT "C"**

To Applicant's Brief in Opposition to Opposer's Motion  
for Suspension of Proceedings or for an Extension of Time

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TERENCE A. DIXON

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November 14, 2006

**VIA FACSIMILE & FIRST CLASS MAIL**

Barbara H. Lowenthal, Esq.  
Gottlieb, Rackman & Reisman PC  
270 Madison Avenue  
New York, NY 10016-0601

Re: *Laurice El Rahme Ltd. dba Laurice & Co. v. Asprey Holdings Limited Corp.*  
Opposition No. 91/167,945

Dear Barbara:

Further to our telephone conversation of earlier today, I am following up with regards to the settlement offer that your client proposed on June 2, 2006.

As I indicated when we spoke, Asprey categorically rejects your client's proposal. As far as our client is concerned, there is no realistic potential for confusion between the respective marks, and the claims that your client has presented in its notice of opposition are entirely frivolous. Our client will not enter into any agreement that would limit their ability to use the mark 167 BOND STREET LONDON in the United States. Nor will they accept any limitations on their ability to register the mark for any of the goods and services that are listed in our client's application. In short, Asprey has no interest in negotiating a settlement with your client on the terms proposed.

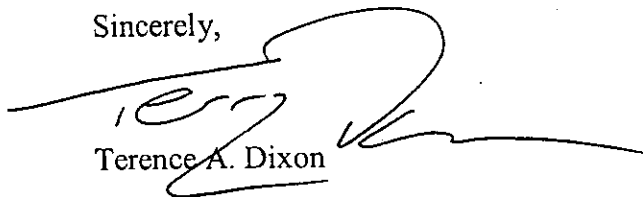
I also note that other than your unsolicited letter of June 2nd (which you did not bother to follow up on until almost 5 months later), there have been no "settlement discussions" between the parties. Indeed, there was no communication between the parties at all until your letter of November 1st requesting an extension of the trial dates. As such, there is no reason to ask the Board to suspend the proceedings pending such non-existent discussions.

Under the circumstances, we think your client should simply withdraw its opposition with prejudice. If your client refuses to do so, Asprey is ready, willing, and able to proceed with the opposition. In particular, Asprey will oppose your client's motion to

suspend and/or extend the proceedings, and we will expect to receive your client's responses to Asprey's pending discovery requests when due during the first week of December.

I look forward to hearing from you promptly.

Sincerely,

A handwritten signature in black ink, appearing to read "Terence A. Dixon", with a long horizontal flourish extending to the right.

Terence A. Dixon